

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1037/2003

Reserved on: 27.4.2007

Date of decision: 30.4.2007

The Hallan-1 Cooperative Consumer Store Ltd. ...Petitioner.
Versus

State of H.P. & others. ...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹ Yes.

For the petitioner : Mr.Praneet Gupta, Advocate,

**For the respondent No.1 to 4 :Mr. M.S. Chandel Advocate General
With Mr. M.A Khan and Ms. Meenakshi
Sharma, Dy. AG.**

For respondent No.5 : Mr. Anand Sharma, Advocate.

Rajiv Sharma,J.

By medium of this writ petition, the petitioner has sought the directions to respondents No.1 to 4 to cancel the allotment of fair price shop made in favour of respondent No.5 at Barai-Ra-Gran.

The brief facts necessary for the adjudication of this petition are that the petitioner society is duly registered under the H.P. Cooperative Societies Act, 1968. The society has been running fair price shop as per the allotment made by the respondents- State.

It appears from the pleadings of the parties that the Government has taken a decision on 7th January, 1985 for allotment of fair price shops under the public distribution system by substituting private individuals by the Cooperative Societies and where no Cooperative Societies are available, the H.P. State Civil Supplies Corporation shall

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*
Yes.

open their retail outlets for the distribution of essential commodities under the public distribution system. This decision was modified by the order dated 25th April, 1985 i.e. Annexure P-3 whereby the decision was taken by the Government that the fair price shop may also be allotted to the ex-serviceman, handicapped and unemployed educated persons subject to the suitability considered by the Deputy Commissioner concerned in their respective areas.

In sequel to order dated 25th April, 1985, the Director, Food and Civil Supplies, Himachal Pradesh has sent a communication to all the Deputy Commissioners in the State stating therein that the first preference has to be given to the Cooperative Sector and the district administration should have exhausted all possibilities of allotting the fair price shop/reviving fair price shop under the Cooperative Sector and the second preference then has to be given to ex-servicemen, handicapped persons or educated unemployed and in the eventuality of all the possibilities being exhausted then alone should the district administration recommend the establishment of retail outlet by the State Civil Supplies Corporation.

The petitioner society was catering the needs of 245 ration card holders comprising of six villages, namely, Barai-Ra-Gran, Raman, Balthan, Kumarti, Charan and Halan. According to the averments in the petition there was no complaint against the petitioner society either from the respective Panchayat or the consumers i.e. ration card holders of six villages.

Mr. Praneet Gupta, Advocate appearing for the petitioners submitted that a decision has been taken in the year 2003 to allot a fair price shop in favour of respondent No.5 at Barai-Ra-Gran in a most illegal and arbitrary manner in breach to Annexures P-3 and P-4. Mr. Gupta submitted that the effect of making allotment of fair price shop in favour of

respondent No.5 was that the society was left with only 146 ration card holders and was incurring the loss to the tune of Rs. 30,000/-.

Learned Advocate General has supported the allotment made in favour of respondent No.5. Mr. Anand Sharma, Advocate appearing for respondent No. 5 while adopting the arguments of learned Advocate General has submitted that respondent No.5 was unemployed educated youth and his name was duly recommended for allotment of fair price shop by the Gram Panchayat on 28.2.2003.

I have perused the record and heard the parties.

The petitioner society has been running the fair price shop and was catering to the needs of six villages with total 245 ration card holders. It is evident from the combined reading of Annexures P-3 and P-4 that the preference was to be given for the allotment of fair price shop to the Cooperative Societies. In the present case the preference has been given to the society who had been running the same by catering to the needs of six villages. The decision to carve out an area from the existing operational area of the petitioner society has been done in an arbitrary manner. Respondent No.5 could not be allotted the fair price shop by reducing number of ration card holders of the petitioner society. There is nothing on record to suggest the manner in which respondent No.5 was picked up for allotment of fair price shop. The allotment could not be made to respondent No.5 merely on the basis of resolution of Gram Panchayat. There was no occasion for the respondents-State to allot the fair price shop to respondent No.5. Assuming hypothetically that the fair price shop was to be allotted to any private individuals, the applications were required to be called for by making advertisement in a suitable manner and only thereafter the suitability of the candidate was to be gone into by the Deputy Commissioner. Admittedly, this exercise has not at all

been undertaken by the respondents-State and fair price shop has been allotted in favour of respondent No.5 in a most arbitrary manner. The State largesse is to be distributed in a just, fair and transparent manner.

The plea raised by the respondents-State that the allotment has been made in favour of respondent no.5 for better services to the consumers is not tenable for the simple reason that there was no complaint against the functioning of the petitioner society. Once the norms have been laid down as is evident from Annexures P-3 and P-4, the same were to be scrupulously followed. The endeavour of the respondents shows undue favour given to respondent No.5 without taking into consideration the Annexures P-3 and P-4 as well as larger public interest.

The submission of Mr. Anand Sharma, Advocate that the respondent No.5 has been allotted the fair price shop as at the relevant time he was educated unemployed youth, is to be rejected. In a Panchayat comprising six villages it cannot be imagine that the respondent No.5 alone was educated unemployed youth available.

Upshot of the above discussion is that the allotment made in favour of respondent No.5 by respondents No.1 to 4 at village Barai-Ra-Gran is liable to be quashed and set aside.

Accordingly the writ petition is allowed. The allotment of fair price shop made in favour of respondent No.5 is quashed and set aside. The respondents No. 1 to 4 are directed to call the fresh applications from all eligible candidates including the respondent No.5 for allotment of fair price shop at village Barai-Ra-Gran and to complete the process within a period of three months from today. To avoid inconvenience to the ration card holders of the Barai-Ra-Gran, till the process of allotment of fair price shop is completed, the respondent No.5 may be permitted to run the fair

price shop. In the eventuality of the shop being not allotted in favour of respondent No.5, the same will be stopped forthwith after the expiry of three months.

Before parting with the judgment, it will be desirable if this Court issues mandatory directions to the respondent Nos. 1 to 4 qua the manner in which the fair price shops are to be allotted in the State for very effective implementation of public distribution system. Accordingly, respondent Nos. 1 to 4 are directed:

- i) Respondents No. 1 to 4 should strictly implement Annexures P-3 and P-4 while allotting fair price shops.**
- ii) The preferences mentioned in Annexures P-3 and P-4 are to be adhered to strictly to shun arbitrariness.**
- iii) In any eventuality, the Cooperative Societies is not available for running the fair price shop, the H.P. State Civil Supplies Corporation should be permitted to open their retail outlet for the distribution of essential commodities under the public distribution system.**
- iv) In case neither the Cooperative Societies nor H.P. State Civil Supplies Corporation is available or forthcoming, in that event persons including ex-servicemen, handicapped or unemployed educated youth are to be considered.**
- v) Proper notice is to be published either in two vernacular newspapers or by any known mode of publication including the affixation of notice at the Panchayat Ghar, Municipal Council office and Nagar Panchayat office. In the advertisement, exact location of fair price shop is required to be mentioned.**

- vi) On the basis of the advertisement/publication, the applications from the categories mentioned in Annexures P-3 and P-4 are to be called, scrutinized by due date as shown in the advertisement and the suitability of the candidates is to be adjudged by the Deputy Commissioner of the concerned District.
- vii) The Deputy Commissioners in the State shall maintain the record of the selection for allotment of fair price shops.
- viii) The Deputy Commissioners may also evolve system of allotting marks to adjudge the suitability of the candidates and therein the preference is to be given to the most educated candidates available.

There shall be no order as to costs.

(Rajiv Sharma), Judge

April 30, 2007
Awasthi